C.F. (15)

(13)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

C.R. No. 191 /2004 Single Bench

APPLICANTS : 1. Puran s/o Chaitu, age 35 years.

(DFD. NO.1)

2. Narbada Prakash s/o Dalsingar, age 55 years.

(DFD. NO.4)

3. Babulal s/o Hiralal, age 30 years.

(DFD. NO.5)

4. Mohar Sai s/o Kalaw Sai, age 40 years.

(DFD. NO.7)

5. Shobhnath Yadav s/o Not Known Occupation-Teacher.

(DFD. NO.8)

6. Bhola s/o Raghuvar, age 40 years.

(DFD. NO.9)

All r/o village Makanpur, P.S. & Tehsil Pratappur, District Surguja, C.G.

V E R S U S

NON-APPLICANTS : 1. Ramjatan s/o Bimal Das, age 50 years, Caste-Panika, r/o village Makanpur, Tehsil Pratappur, District Surguja, C.G.

(PLAINTIFF)

2. Bajaro w/o Late Madhai.

3. Dharan Bai d/o Late Madhai.

Both r/o village Makanpur, Post Karsi, Tehsil Pratappur, Distt. Surguja, C.G.

(LRs OF DFD. NO.2)

Clerk to A. G. Bilaspur

P.R. No. 2527/04
Presented by Shri Rajesh Tiwari
dated 6/7/04

(24)

4. A.Aziz, Document Writer, at & Post Ambikapur, District Surguja, C.G.

(DFD. NO.6)

5. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur, C.G.

(PROFORMA DFD. NO.10)

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R. 191/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08.02.2005:-

Shri A.K.Prasad, learned counsel for the applicants.

The instant revision has been filed by the applicants as they are aggrieved by the order passed in Misc. Appeal and by which the order of the trial Court abating the suit of the respondents for not bringing the legal heirs of the deceased/defendant within the time prescribed has been set aside.

Learned counsel for the applicants submits that it was the duty of the plaintiff to bring the legal heirs of the deceased/defendant No. 2 namely Madhai who died on 05.07.1999, within three months from the date of death. However, an application for bringing legal heirs of the deceased/defendant was only filed on 30.11.1999, without any application for condoning the delay and without any application for setting aside the abatement.

I have heard learned counsel for the applicants.

The information regarding the death of deceased/defendant was given by counsel for the defendant on 24.11.1999 and thereafter the application for substitution was filed on 30.11.1999. However, the same was dismissed by the trial Court on 09.12.1999 on the ground that the suit

XI-HC-22

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has ~~self~~ stood abated and there was no application for setting aside the abatement nor there was any application for condonation of delay. Thereafter, on 23.12.1999 an application under Order 22 Rule 9 of C.P.C. supported by one affidavit was filed for setting aside the abatement, and the same was also dismissed on 14.07.2000 against which a Miscellaneous Appeal was preferred and which was allowed by the impugned order.

Looking to the fact that the information regarding death of the defendant No. 2 was given by counsel for the deceased/defendant almost four months after the death, I do not find any ~~affirmative~~ infirmity in the impugned order whereby the learned first appellate Court has allowed the miscellaneous appeal and set aside the order of abatement passed by the trial Court and there is no merit in the present revision. Thus, it is liable to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

[पीछे देखिये